

THE LAW FIRM
OF



RAVI BATRA

THE BATRA BUILDING
142 LEXINGTON AVE.
NEW YORK, NEW YORK 10016
212-545-1993

RAVI@RAVIBATRALAW.COM

FAX: 212-545-0967

November 27, 2013

Via ECF

Hon. P. Kevin Castel
United States District Judge
United States District Court for the
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *In Touch Concepts, Inc. v. Celco Partnership, et al*, 13 Civ. 1419 (PKC)

Dear Respected Judge Castel:

We represent Plaintiff In Touch Concepts, Inc. d/b/a Zcom.

Yesterday, November 26, 2013 at 5:33 p.m., the Verizon Wireless (VZW) defendants' made a letter request for a bifurcated enlargement of time to answer the complaint (D.E. 98).

Thereafter, by letter filed at 7:18 p.m. (D.E. 99), less than two hours later, we expeditiously objected to same, given that the VZW defendants were in default for a minimum of 141 days, based upon the reasoning of Your Honor's prior Orders. We further requested that, in fairness, if Your Honor were to permit the VZW defendants additional time to answer, that Zcom be afforded the time to re-plead or move to re-plead that it had previously sought.

By “memo endorsed” Order entered at 11:33 a.m. this morning (November 27, 2013), yet hand dated November 26, 2013 (notwithstanding that ¶ 1(A) of Your Honor’s Individual Practices, updated on November 5, 2013, provides that “[a]s a general matter, letters filed via ECF are reviewed by the Court on the business day after they have been filed”), Your Honor granted the VZW defendants’ request and gave them more time than they had sought (D.E. 100). Given that the hand endorsement is dated yesterday, the possibility exists that Your Honor granted the VZW defendants relief prior to having seen or considered Zcom’s Opposition and Request for relief filed 1 hour and 45 minutes after the VZW defendants had made their request.

Accordingly, it is respectfully requested that Your Honor reconsider the relief granted to the VZW defendants in light of Zcom’s submission yesterday. Or, alternatively, that Your Honor grant the relief sought by Zcom, to wit: leave to re-plead, or at least leave to move to re-plead - given the liberality of Rule 15 and the critical fact that not a single defendant objected nor did any defendant ever claim a scintilla of prejudice.

Furthermore, in light of the VZW defendants’ submissions to the Court yesterday, where they posit that the “relevant operative pleading was not determined until November 18” (D.E. 98 at p. 1), it follows that Zcom’s time to move to re-plead should be calculated using the same “clock,” or it is inescapable that the VZW defendants are in default for a minimum of 141 days and have proffered nothing remotely sounding in “excusable neglect” while there is manifest prejudice to Zcom who is entitled to a default against the VZW defendants.

Zcom respectfully requests that Your Honor vacate the “memo endorsed” Order hand dated November 26, 2013 and entered November 27, 2013 (D.E. 100) and issue a new Order having considered Zcom’s lightning fast responsive submission to the Court, within 1 hour and 45 minutes of the VZW defendants’ letter and that too after hours.

Respectfully submitted,

Ravi Batra, Esq. (RB 4299)

cc (via ECF):

Philip R. Sellinger, Esq.
Jeremy D. Frey, Esq.

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